

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK *et al.*,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES *et*  
*al.*,

*Defendants.*

Civil Action No. 1:20-cv-05583-AKH

**UNOPPOSED MOTION OF AMERICAN CANCER SOCIETY, AMERICAN  
CANCER SOCIETY CANCER ACTION NETWORK, AMERICAN HEART  
ASSOCIATION, AMERICAN LUNG ASSOCIATION, CANCER SUPPORT  
COMMUNITY, CANCERCARE, CYSTIC FIBROSIS FOUNDATION,  
EPILEPSY FOUNDATION, HEMOPHILIA FEDERATION OF AMERICA,  
NATIONAL COALITION FOR CANCER SURVIVORSHIP, NATIONAL  
MULTIPLE SCLEROSIS SOCIETY, NATIONAL ORGANIZATION FOR  
RARE DISORDERS, NATIONAL PATIENT ADVOCATE FOUNDATION,  
THE AIDS INSTITUTE, AND WOMENHEART: THE NATIONAL  
COALITION FOR WOMEN WITH HEART DISEASE FOR LEAVE TO FILE  
BRIEF AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS' RENEWED  
MOTION FOR SUMMARY JUDGMENT**

American Cancer Society (ACS), American Cancer Society Cancer Action Network (ACS CAN), American Heart Association (AHA), American Lung Association (ALA), Cancer Support Community (CSC), CancerCare, Cystic Fibrosis Foundation (CFF), Epilepsy Foundation, Hemophilia Federation of America (HFA), National Coalition for Cancer Survivorship (NCCS), National Multiple Sclerosis Society (NMSS), National Organization for Rare Disorders (NORD), National Patient Advocate Foundation (NPAF), The AIDS Institute, and WomenHeart: The National Coalition for Women with Heart Disease (WomenHeart) (collectively, “Proposed Amici”) move for leave to file the accompanying brief as amici curiae in support of plaintiffs’ renewed motion for summary judgment.

Both plaintiffs and defendants consent to the relief requested in this motion.

## **I. INTEREST OF AMICI**

Proposed Amici collectively represent millions of patients and consumers across the country facing serious, acute, and chronic health conditions. Proposed Amici have a unique perspective on what individuals and families need to prevent disease, manage health, and cure illness—and a deep understanding of the harm that will result if the 2020 Rule is left in place.

ACS’s mission is to save lives, celebrate lives, and lead the fight for a world without cancer. ACS CAN is the nonpartisan advocacy affiliate of ACS, working

to reduce the burden of cancer across all communities, and striving for health equity nationwide.

AHA is the nation's oldest and largest voluntary organization dedicated to fighting heart disease and stroke and represents more than 40 million volunteers and supporters. As a direct result of the 2020 rule, those individuals that AHA represents will face discrimination or the threat of discrimination based on sex stereotyping and gender identity, therefore lowering the quality of medical care they receive and leading to worse health outcomes, especially as it pertains to cardiovascular health.

ALA is the nation's oldest voluntary health organization, representing the 36.6 million Americans with lung disease in all 50 states and the District of Columbia. Because all people with or at risk for lung cancer and lung diseases—such as asthma, Chronic Obstructive Pulmonary Disease (COPD) and pulmonary fibrosis—need access to quality health care to prevent or treat their disease, ALA strongly supports increasing health equity nationwide.

The CSC is the largest nonprofit provider of social and emotional support services for people impacted by cancer, providing \$50 million in free, personalized services each year to individuals and families affected by cancer nationwide and internationally.

CancerCare is the leading national organization providing free, professional support services and information to help people manage the emotional, practical and financial challenges of cancer.

The CFF's mission is to cure cystic fibrosis and to provide all people with CF the opportunity to lead long, fulfilling lives by funding research and drug development, partnering with the CF community, and advancing high-quality, specialized care. The CFF advocates for policies that promote access to affordable, adequate health care for all people with cystic fibrosis.

The Epilepsy Foundation is the leading national voluntary health organization that speaks on behalf of more than 3.4 million Americans with epilepsy and seizures. Uncontrolled seizures can lead to disability, injury, and even death. Epilepsy medications are the most common and most cost-effective treatment for controlling and/or reducing seizures—making timely access to quality, affordable, physician-directed and person-centered care and effective coverage for epilepsy medications vital for all people living with the epilepsies.

HFA is a community-based, grassroots advocacy organization that assists, educates, and advocates for people with hemophilia, von Willebrand disease, and other rare bleeding disorders. HFA works for patient access to quality and affordable care and coverage—priorities that reflect the nature of bleeding disorders as serious, life-long, and expensive health conditions.

NCCS was founded by and for cancer survivors and advocates for quality cancer care for all people touched by cancer. NCCS opposed any effort to restrict access to health care, particularly for vulnerable populations.

The NMSS mobilizes people and resources so that everyone affected by multiple sclerosis (MS) can live their best lives, while also seeking to end MS forever. To fulfill this mission, the NMSS funds more MS research and provides more programs for people with MS and their families than any other voluntary health organization in the world. The NMSS works to ensure that all people with MS have access to affordable high-quality health care.

NORD, a 501(c)(3) organization, is a patient advocacy organization dedicated to individuals with rare diseases and the organizations that serve them. NORD, along with its more than 300 patient organization members, is committed to the identification, treatment, and cure of rare disorders through programs of education, advocacy, research, and patient services.

NPAF is dedicated to elevating patient and caregiver voices as part of improving equitable access to affordable quality care, particularly for our most underserved populations. NPAF is the advocacy affiliate of Patient Advocate Foundation (PAF), a national organization that provides direct assistance to families coping with complex and chronic health conditions to help meet their most pressing needs for financial and social services advocacy and support.

The AIDS Institute is a nonpartisan, nonprofit organization dedicated to ensuring that all people living with, or at risk of, HIV, viral hepatitis, and other chronic illnesses have access to the care and services they need.

WomenHeart is a national patient-centered organization that supports, educates and advocates for women living with and at risk of heart disease. Women sometimes face sexism and discrimination in the health care system; WomenHeart works to ensure that all people are treated fairly and without bias when seeking health care.

Proposed Amici are all deeply concerned about the effect the 2020 Rule will have on the individuals and families they represent. As a direct result of the rule, many individuals will face discrimination or the threat of discrimination, lowering the quality of medical care they receive and leading to worse health outcomes. Amici submit this brief to assist the court in understanding the nature and extent of this harm.

## **II. USEFULNESS OF BRIEFING BY PROPOSED AMICI CURIAE**

This Court has “broad discretion to permit” amicus curiae briefs. *Auto. Club of N.Y., Inc. v. Port Auth.*, No. 11-cv-6746, 2011 WL 5865296, at \*1 (S.D.N.Y. Nov. 22, 2011). Such briefs can “aid” the Court by “offer[ing] insights not available from the parties.” *United States v. El-Gabrownny*, 844 F. Supp. 955, 957 n.1 (S.D.N.Y. 1994).

As detailed in the attached proposed brief, the availability of affordable, accessible, and adequate health care for all individuals is critical to health outcomes. The 2020 Rule, however, eliminates critical protections and against discrimination in health care for lesbian, gay, bisexual, transgender and queer people and limited-English-proficient individuals. Such discrimination can be particularly harmful for Americans suffering from chronic conditions. Proposed Amici believe the accompanying brief will help the Court in understanding the nature and extent of this harm.

### **CONCLUSION**

For these reasons, Proposed Amici ask that the Court grant them leave to file the accompanying brief as amici curiae. A proposed order is enclosed with this motion.

Dated: December 9, 2020

Respectfully submitted,

/s/ Joseph R. Palmore  
JOSEPH R. PALMORE (JP7646)  
SETH W. LLOYD  
MORRISON & FOERSTER LLP  
2100 L St., NW  
Washington, DC 20037  
Telephone: (202) 887-6940  
JPalmore@mofo.com

*Counsel for Proposed Amici*

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern District of New York by using the CM/ECF system on December 9, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: December 9, 2020

/s/ Joseph R. Palmore

Joseph R. Palmore

ny-2033095